

1 UNITED STATES DISTRICT COURT

2 DISTRICT OF NEVADA

3 BRANCH BANKING AND TRUST  
4 COMPANY, a North Carolina banking  
5 corporation,

6 Plaintiff,

7 v.

8 REGENA HOMES, LLC, a Nevada limited  
9 liability company; YOEL INY, an individual;  
10 NOAM SCHWARTZ, an individual; YOEL INY,  
11 Trustee of the Y & T INY FAMILY TRUST  
12 dated June 8, 1994, as amended; NOAM  
13 SCHWARTZ, Trustee of the NOAM  
14 SCHWARTZ TRUST dated August 19, 1999;  
15 D.M.S.I., LLC, a Nevada limited liability  
16 company; GREAT AMERICAN CAPITAL, a  
17 Nevada corporation; and DOES 1 through 10,  
18 inclusive.

19 Defendants.

CASE NO. 2:12-cv-00451-APG-GWF

**FINDINGS OF FACTS, CONCLUSIONS  
OF LAW, AND JUDGMENT**

20 Plaintiff seeks a deficiency judgment against defendants arising from a commercial loan.  
21 On July 23, 2014, my predecessor on this case, Judge Jones, entered partial summary judgment  
22 in favor of Plaintiff and against Defendants as to Defendants' liability for breach of contract  
23 ("Summary Judgment Order"). (Dkt. #110.) As a result of the Summary Judgment Order, the  
24 issue that remained was the amount of any deficiency Defendants owed to Plaintiff under  
25 Nevada Revised Statute §40.451, *et. seq.*

26 On April 9, 2015, Plaintiff and Defendants stipulated that on February 29, 2012 the  
27 subject property (identified as Clark County Assessor Parcel Number 124-27-504-001)  
28 ("Property") was sold at a non-judicial trustee's sale for a credit bid in the amount of  
\$240,000.00. (Dkt. #153.) On April 13, 2015, a jury trial was held to determine the amount of  
indebtedness owed on the subject note on the date of the trustee's sale. The jury returned a  
verdict that the amount was \$2,069,845.78. (Dkt. #162.) On May 12, 2015, I conducted a bench  
trial to determine the Property's fair market value as of February 29, 2012. At the bench trial,  
the parties stipulated that the fair market value on that date was \$498,000.00. (Dkt. #169.)

Based on the Summary Judgment Order, the jury verdict, the stipulations of the parties,

1 and the arguments and papers filed in this case, I make the following findings of facts and  
2 conclusions of law:

3 **I.**

4 **FINDINGS OF FACT**

5 1. The facts set forth in the Summary Judgment Order are incorporated herein as if  
6 fully set forth.

7 2. According to the jury verdict, the amount of indebtedness owed by the  
8 Defendants on the subject note on the date of the February 29, 2012 trustee's sale was  
9 \$2,069,845.78.

10 3. The Property was sold at a non-judicial trustee's sale on February 29, 2012 to  
11 Plaintiff for a credit bid in the amount of \$240,000.00.

12 4. Pursuant to the parties' stipulation, the fair market value of the Property on the  
13 date of February 29, 2012 trustee's sale was \$498,000.00.

14 5. After providing Defendants credit for the fair market value of the Property on the  
15 date of the trustee's sale (\$498,000.00), the deficiency amount owed by Defendants to Plaintiff  
16 as of February 29, 2012 was \$1,571,845.78.

17 6. Pursuant to the loan documents, the default interest rate is five percent over the  
18 applicable interest rate, which is an annual rate equal to two and one quarter percent plus the  
19 one-month LIBOR rate quoted by Telerate Page 3750 or any successor thereto, which shall be  
20 the one-month LIBOR rate in effect and reset each New York banking day, with interest  
21 computed on the basis of a 360-day year and actual days elapsed.

22 7. Without including the LIBOR rate in effect and reset each day, a default interest  
23 rate of 7.25% calculated on the basis of a 360-day year and actual days elapsed results in a per  
24 diem interest amount of \$316.55.

25 8. From February 29, 2012 until May 12, 2015, the accrued interest on the debt was  
26 \$370,049.61.

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## II.

### CONCLUSIONS OF LAW

1. A secured lender has no duty to immediately foreclose on its security interest. *See, e.g., Clay v. F.D.I.C.*, 934 F.2d 69, 71 (5th Cir. 1991) (holding that defendants did not act in bad faith and were not dishonest because the value of the real property diminished prior to defendant foreclosing on the property); *F.D.I.C v. Blanton*, 918 F.2d 524, 531 (5th Cir. 1990) (stating that a foreclosing party does not have a common law duty to foreclose on a real property lien expeditiously).

2. Prior to the award of a deficiency judgment, NRS §40.455 requires that a hearing be conducted under NRS §40.457.

3. Pursuant to NRS §40.459, after a hearing is held pursuant to NRS §40.457, “the court shall award a money judgment against the debtor, guarantor or surety who is personally liable for the debt. The court shall not render judgment for more than: (a) The amount by which the amount of the indebtedness which was secured exceeds the fair market value of the property sold at the time of the sale, with interest from the date of the sale; (b) The amount which is the difference between the amount for which the property was actually sold and the amount of the indebtedness which was secured, with interest from the date of sale...whichever is the lesser amount.”

## III.

### ORDER AND JUDGMENT

Based on the foregoing, the verdict of the jury, and previous orders of the Court:

**IT IS HEREBY ORDERED** that the fair market value of the Property on the date of the trustee’s sale was \$498,000.00, which was higher than the trustee’s sale price.

**IT IS FURTHER ORDERED** that, taking the amount of indebtedness on the date of the trustee’s sale (\$2,069,845.78) and providing Defendants credit for the fair market value of the Property on the date of the trustee’s sale (\$498,000.00), the amount of the deficiency owed by Defendants to Plaintiff on February 29, 2012 was \$1,571,845.78. That amount accrued interest at the subject note’s default interest rate.



**IT IS FURTHER ORDERED** that plaintiff Branch Banking and Trust Company is entitled to reasonable attorneys' fees and costs in amounts to be determined by the court. If Branch Banking and Trust Company seeks to recover those fees and costs, it shall file a motion with appropriate documentation within 14 days of entry of this Judgment.

DATED: August 27, 2015.